



Senate

General Assembly

File No. 467

February Session, 2004

Substitute Senate Bill No. 464

Senate, April 6, 2004

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE CONTROL AND SECURITY OF RADIOACTIVE MATERIAL.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-151 of the general statutes is amended by
2 adding subdivisions (9) and (10) as follows (*Effective October 1, 2004*):

3 (NEW) (9) "Commissioner" means the Commissioner of
4 Environmental Protection or a designee or agent of the Commissioner
5 of Environmental Protection.

6 (NEW) (10) "Radioactive materials" means any solid, liquid or gas
7 that emits ionizing radiation spontaneously.

8 Sec. 2. Section 22a-153 of the general statutes is repealed and the
9 following is substituted in lieu thereof (*Effective October 1, 2004*):

10 (a) The [Commissioner of Environmental Protection] commissioner
11 shall supervise and regulate in the interest of the public health and

12 safety the use of ionizing radiation within the state.

13 (b) [Said] The commissioner may employ, subject to the provisions
14 of chapter 67, and prescribe the powers and duties of such persons as
15 may be necessary to carry out the provisions of sections 22a-151 to 22a-
16 158, inclusive, as amended by this act.

17 (c) [Said] The commissioner shall [make such regulations as may be
18 necessary to carry out the provisions of said sections] adopt
19 regulations, in accordance with the provisions of chapter 54, regarding
20 sources of ionizing radiation and radioactive materials, including, but
21 not limited to:

22 (1) Regulations necessary to secure agreement state status from the
23 Nuclear Regulatory Commission pursuant to Section 274 of the Atomic
24 Energy Act of 1954, 42 USC 2021, as amended;

25 (2) Regulations relating to the construction, operation, control,
26 tracking, security and decommissioning of sources of ionizing
27 radiation, including, but not limited to, any modification or alteration
28 of such sources;

29 (3) Regulations relating to the production, transportation, use,
30 storage, possession, management, treatment, disposal or remediation
31 of radioactive materials;

32 (4) Regulations relating to planning for and responding to terrorist
33 or other emergency events, or the potential for such events, that
34 involve or may include radioactive materials;

35 (5) Regulations as may be necessary to carry out the provisions of
36 sections 22a-151 to 22a-158, inclusive, as amended by this act; and

37 (6) Regulations establishing fees for the licensure of sources of
38 ionizing radiation, which fees, in conjunction with the fees collected
39 pursuant to section 22a-148, as amended, shall be sufficient for the
40 administration, implementation and enforcement of an ionizing
41 radiation program.

42 (d) The Governor or the commissioner is authorized to employ such
43 consultants, experts and technicians as [he shall deem] necessary for
44 the purpose of conducting investigations and reporting [to him] on
45 matters connected with the implementation of the provisions of [said
46 sections] sections 22a-148 to 22a-158, inclusive, as amended by this act.

47 (e) There is established within the Environmental Quality Fund
48 established under section 22a-27g an account to be known as the
49 "ionizing radiation management account". Notwithstanding the
50 provisions of section 22a-27g, any moneys collected in accordance with
51 section 22a-148, as amended, or 22a-150, or any regulations adopted in
52 accordance with subsection (c) of this section, shall be deposited in the
53 Environmental Quality Fund and credited to the ionizing radiation
54 management account. Any balance remaining in the account at the end
55 of any fiscal year shall be carried forward in the account for the fiscal
56 year next succeeding. Said account may also receive moneys from
57 other sources. The account shall be available to the commissioner to
58 implement, administer and enforce (1) the ionizing radiation program,
59 or (2) the provisions of sections 22a-148 to 22a-158, inclusive, as
60 amended by this act, or any regulations or guidelines adopted
61 pursuant to said sections. Nothing in this subsection shall prevent the
62 commissioner from obtaining or using funds from sources other than
63 the ionizing radiation management account for the purposes of
64 implementing, administering, and enforcing an ionization radiation
65 program.

66 (f) The commissioner may establish radiation exposure guidelines
67 for emergency responders and the public for the management of
68 terrorist events or other emergencies involving radioactive materials.
69 Any such guidelines may be based upon the recommendations of the
70 federal government and the National Council on Radiation Protection
71 and Measurements.

72 Sec. 3. Subsection (a) of section 22a-154 of the general statutes is
73 repealed and the following is substituted in lieu thereof (*Effective*
74 *October 1, 2004*):

75 (a) The Commissioner of Environmental Protection may [provide by
76 regulation for] adopt regulations, in accordance with the provisions of
77 chapter 54, for the general or specific licensing of [by-product, source,
78 special nuclear materials and other] sources of ionizing radiation. [, or
79 devices or equipment utilizing such materials, and for amendment,
80 suspension, or revocation of licenses issued pursuant thereto.] The
81 commissioner may issue, deny, renew, modify, suspend or revoke
82 such licenses and may include such terms and conditions in such
83 licenses that the commissioner deems necessary.

84 Sec. 4. Section 22a-155 of the general statutes is repealed and the
85 following is substituted in lieu thereof (*Effective October 1, 2004*):

86 [(a) In any proceeding under sections 22a-151 to 22a-158, inclusive,
87 or any other applicable statute (1) for the issuance or modification of
88 rules and regulations relating to control of sources of ionizing
89 radiation; or (2) for granting, suspending, revoking or amending any
90 license; or (3) for determining compliance with or granting exceptions
91 from rules and regulations of the Commissioner of Environmental
92 Protection, the commissioner or his representative designated in
93 writing shall hold a hearing upon the request of any person whose
94 interest may be affected by the proceeding, and shall admit any such
95 person as a party to such proceeding. Thirty days published notice
96 shall be given of any such hearing.

97 (b) Any final order entered in any proceeding under subsection (a)
98 above shall be subject to judicial review by the Superior Court in the
99 manner prescribed in section 25-36.]

100 (a) The commissioner may issue, modify or revoke orders to correct
101 or abate (1) pollution or a potential source of pollution from ionizing
102 radiation or radioactive materials, or (2) violations of sections 22a-148
103 to 22a-150, inclusive, as amended, section 22a-153, as amended by this
104 act, 22a-154, as amended by this act, 22a-157, as amended by this act,
105 or 22a-158, or any regulation adopted or license issued pursuant to
106 said sections. Such orders may include steps necessary to correct or
107 abate pollution or a potential source of pollution or any violation, or

108 other measures the commissioner deems necessary. Such orders may
109 be issued to any person who violates any provision of said sections, or
110 any regulation adopted or registration or license issued pursuant to
111 said sections or to the owner of any land on which the violation occurs,
112 regardless of whether the owner of the land participated in the
113 violation. If two or more persons are issued an order pursuant to this
114 section for the same violation, such persons shall be jointly and
115 severally liable for complying with such order.

116 (b) Each order issued under this section shall be served by certified
117 mail, return receipt requested, or by service by a state marshal or
118 indifferent person. If a state marshal or indifferent person serves the
119 order, a true copy of the order shall be served, and the original, with a
120 return of such service endorsed thereon, shall be filed with the
121 commissioner. The order shall be deemed to be issued upon service or
122 upon deposit in the mail. Any order issued pursuant to this section
123 shall state the basis on which it is issued and shall specify a reasonable
124 time for compliance.

125 (c) Unless a person aggrieved by an order files a written request for
126 a hearing before the commissioner not later than thirty days after the
127 date of issuance, such order shall become final. If requested, the
128 commissioner shall hold a hearing as soon thereafter as practicable. A
129 request for a hearing shall be a condition precedent to any appeal. The
130 commissioner may, after the hearing or at any time after the issuance
131 of the order, modify such order by agreement or extend the time
132 schedule contained in the order if the commissioner deems such
133 modification or extension advisable or necessary and any such
134 modification or extension shall be deemed to be a revision of an
135 existing order and shall not constitute a new order. There shall be no
136 hearing subsequent to, or any appeal from, any such modification or
137 extension.

138 (d) After the hearing, the commissioner shall consider all
139 supporting and rebutting evidence and may affirm, modify or revoke
140 such order and shall notify the recipient of the order of such action by

141 certified mail, return receipt requested.

142 (e) When the commissioner issues a final order pursuant to this
143 section, the commissioner shall cause a certified copy or notice thereof
144 to be recorded on the land records in the municipality in which the
145 land is located, and such certified copy or notice shall constitute a
146 notice to the owner's heirs, successors and assigns. When the order has
147 been fully complied with or revoked, the commissioner shall issue a
148 certificate acknowledging such compliance or revocation, which
149 certificate the commissioner shall cause to be recorded on the land
150 records in the municipality in which the order was previously
151 recorded.

152 (f) A final order of the commissioner shall be subject to appeal as set
153 forth in sections 4-183 and 4-184, except that any such appeal shall be
154 taken to the superior court for the judicial district of New Britain.

155 Sec. 5. Section 22a-156 of the general statutes is repealed and the
156 following is substituted in lieu thereof (*Effective October 1, 2004*):

157 Whenever, in the judgment of the [Commissioner of Environmental
158 Protection] commissioner, any person has engaged in or is about to
159 engage in (1) any acts or practices which constitute, or will constitute, a
160 violation of any provision of sections [22a-151 to 22a-158, inclusive, or
161 any other applicable statute] 22a-148 to 22a-150, inclusive, as amended,
162 sections 22a-153 to 22a-155, inclusive, as amended by this act, section
163 22a-157, as amended by this act, or 22a-158, or any rule, regulation
164 adopted or, license or order issued [thereunder, at the request of the
165 Commissioner of Environmental Protection] pursuant to said sections,
166 or (2) any act or omission in which a person has established, created, or
167 maintained or will establish, create, or maintain an exposure hazard or
168 source of pollution from ionizing radiation or radioactive material,
169 upon the request of the commissioner, the Attorney General [may
170 make application to the appropriate court] shall bring an action in the
171 superior court for the judicial district of Hartford for an order
172 enjoining such acts, [or] practices, or omissions to order remedial
173 measures to control or abate a hazard or pollution, or for an order

174 directing compliance and, upon a showing by the commissioner that
175 such person has engaged or is about to engage in any such acts or
176 practices or omissions, a permanent or temporary injunction,
177 restraining order or other order may be granted. Any such action
178 brought by the Attorney General pursuant to this section shall have
179 precedence in the order of trial as provided for in section 52-191.

180 Sec. 6. (NEW) (*Effective October 1, 2004*) (a) Any person who violates
181 any provision of sections 22a-148 to 22a-150, inclusive, of the general
182 statutes, as amended, sections 22a-153 to 22a-155, inclusive, section
183 22a-157 or 22a-158 of the general statutes, as amended by this act, or
184 any regulation adopted or license or order issued pursuant to said
185 sections, or any owner of land who permits such violations to occur on
186 such owner's land, shall be assessed a civil penalty of not more than
187 ten thousand dollars per day for each offense. Each violation shall be a
188 separate and distinct offense and, in the case of a continuing violation,
189 each day's continuance thereof shall be deemed a separate and distinct
190 offense. If two or more persons are responsible for such violation, such
191 persons shall be jointly and severally liable under this section. The
192 Attorney General, upon request of the Commissioner of
193 Environmental Protection, shall institute a civil action in the superior
194 court for the judicial district of Hartford to recover such penalty. Any
195 such action brought by the Attorney General pursuant to this section
196 shall have precedence in the order of trial as provided for in section 52-
197 191 of the general statutes.

198 (b) Any person who, with criminal negligence, violates any
199 provision of sections 22a-148 to 22a-150, inclusive, of the general
200 statutes, as amended, sections 22a-153 to 22a-155, inclusive, section
201 22a-157 or 22a-158 of the general statutes, as amended by this act, or
202 any regulation adopted or license or order issued pursuant to said
203 sections shall be fined not more than twenty-five thousand dollars per
204 day for each violation or be imprisoned not more than one year, or
205 both. A subsequent conviction for any such violation shall carry a fine
206 of not more than fifty thousand dollars per day for each day of
207 violation or imprisonment for not more than two years, or both. Each

208 violation shall be a separate and distinct offense, and, in the case of a
209 continuing violation, each day a violation continues shall be deemed to
210 be a separate and distinct offense. For the purposes of this subsection,
211 "person" includes, but is not limited to, any responsible corporate
212 officer or municipal official.

213 (c) Any person who knowingly violates any provision of sections
214 22a-148 to 22a-150, inclusive, of the general statutes, as amended,
215 sections 22a-153 to 22a-155, inclusive, section 22a-157 or 22a-158 of the
216 general statutes, as amended by this act, or any regulation adopted or
217 license or order issued pursuant to said sections shall be fined not
218 more than fifty thousand dollars per day for each day of violation or be
219 imprisoned not more than three years, or both. A subsequent
220 conviction for any such violation shall carry a fine of not more than
221 one hundred thousand dollars per day for each day of violation or
222 imprisonment for not more than ten years, or both. Each violation shall
223 be a separate and distinct offense, and, in the case of a continuing
224 violation, each day a violation continues shall be deemed to be a
225 separate and distinct offense. For the purposes of this subsection,
226 "person" includes, but is not limited to, any responsible corporate
227 officer or municipal official.

228 (d) Any person who knowingly makes a false statement,
229 representation or certification in an application, record, report, plan or
230 other document filed or required to be maintained under sections 22a-
231 148 to 22a-150, inclusive, of the general statutes, as amended, sections
232 22a-153 to 22a-155, inclusive, section 22a-157 or 22a-158 of the general
233 statutes, as amended by this act, or any regulation adopted or license
234 or order issued pursuant to said sections, or who falsifies, tampers
235 with, or knowingly renders inaccurate any monitoring device or
236 method required to be maintained under said sections, or any
237 regulation adopted or registration, license or order issued pursuant to
238 said sections, shall, upon conviction, be fined not more than twenty-
239 five thousand dollars per day for each violation or imprisoned not
240 more than two years for each violation, or both. Each violation shall be
241 a separate and distinct offense, and, in the case of a continuing

242 violation, each day a violation continues shall be deemed to be a
243 separate and distinct offense. For the purposes of this subsection,
244 "person" includes, but is not limited to, any responsible corporate
245 officer or municipal official.

246 Sec. 7. Section 22a-157 of the general statutes is repealed and the
247 following is substituted in lieu thereof (*Effective October 1, 2004*):

248 No person shall construct, use, manufacture, produce, transport,
249 transfer, receive, acquire, own or possess any source of ionizing
250 radiation, unless exempt, licensed or registered in accordance with the
251 provisions of sections [22a-151] 22a-148 to 22a-158, inclusive, as
252 amended by this act.

253 Sec. 8. (NEW) (*Effective October 1, 2004*) (a) If a person who causes or
254 is responsible for any discharge, spillage, uncontrolled loss, release,
255 leakage, seepage or filtration of radioactive material or radioactive
256 waste, or for any exposure hazard or potential exposure hazard from
257 radioactive materials, radioactive waste, or a source of ionizing
258 radiation, does not act immediately to prevent, contain and remove or
259 mitigate the effects of such hazard, discharge, spillage, loss, release,
260 leakage, seepage or filtration to the satisfaction of the Commissioner of
261 Environmental Protection, or if such person is unknown, and such
262 discharge, spillage, loss, leakage, seepage or filtration is not being
263 contained, removed or mitigated by the federal government, a state
264 agency, a municipality or a regional or interstate authority, the
265 commissioner may investigate, contain and remove, mitigate, monitor
266 or prevent the effects of such hazard, discharge, spillage, loss, leakage,
267 seepage or filtration. The commissioner may enter into a contract with
268 any person for the purpose of carrying out the provisions of this
269 subsection.

270 (b) Any person who causes or is responsible for pollution or
271 contamination or potential pollution or contamination of any land,
272 water or air resources of the state through a discharge, spillage,
273 uncontrolled loss, leakage or leaching of radioactive material or
274 radioactive waste, or who causes or is responsible for any exposure

275 hazard or potential exposure hazard from radioactive materials,
276 radioactive waste, or a source of ionizing radiation shall be liable for
277 all costs and expenses incurred by the commissioner in investigating,
278 containing, removing, cleaning, monitoring, mitigating or preventing
279 such pollution or contamination or potential pollution or
280 contamination and legal expenses and court costs incurred in such
281 recovery. Nothing in this subsection shall preclude the commissioner
282 from seeking additional compensation or such other relief that a court
283 may award, including punitive damages. When such hazard, pollution
284 or contamination results from the actions or inaction of more than one
285 person, each person shall be held jointly and severally liable for such
286 costs. Upon request of the commissioner, the Attorney General shall
287 bring a civil action to recover all such costs and expenses from the
288 person who causes or is responsible for such hazard, pollution or
289 contamination.

290 (c) Any person who contains or removes or otherwise cleans
291 radioactive material or radioactive waste pollution or contamination,
292 or mitigates the effects of radioactive material or radioactive wastes
293 resulting from a discharge, spillage, uncontrolled loss, leakage or
294 leaching of radioactive material or radioactive waste not authorized by
295 regulation, registration or license shall be entitled to reimbursement
296 from any person responsible for such pollution or contamination for
297 the reasonable costs expended for such containment, removal, cleaning
298 or mitigation, if such pollution or contamination resulted from the
299 negligent or reckless conduct, or intentional act of such responsible
300 person. When such pollution or contamination results from the
301 negligence of more than one person, each person shall be held jointly
302 and severally liable for such costs.

303 (d) Whenever the commissioner incurs contractual obligations in
304 carrying out the duties of subsection (a) of this section and the person
305 responsible for the pollution or contamination does not assume such
306 contractual obligations, the commissioner shall request the Attorney
307 General to bring a civil action pursuant to subsection (a) of this section
308 to recover the costs and expenses of such contractual obligations. If the

309 responsible person, firm or corporation is unknown, the commissioner
310 shall request the federal government to assume such contractual
311 obligations to the extent provided for by federal law.

312 Sec. 9. Subsection (a) of section 22a-6a of the general statutes is
313 repealed and the following is substituted in lieu thereof (*Effective*
314 *October 1, 2004*):

315 (a) Any person who knowingly or negligently violates any
316 provision of section 14-100b or 14-164c, as amended, subdivision (3) of
317 subsection (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5,
318 22a-6, as amended, or 22a-7, chapter 440, chapter 441, section 22a-69 or
319 22a-74, subsection (b) of section 22a-134p, section 22a-148 to 22a-150,
320 inclusive, as amended, 22a-153, 22a-154, as amended by this act, 22a-
321 157, as amended by this act, 22a-158, 22a-162, 22a-171, 22a-174, as
322 amended, 22a-175, 22a-177, 22a-178, 22a-181, 22a-183, 22a-184, 22a-190,
323 22a-208, 22a-208a, 22a-209, 22a-213, 22a-220, 22a-225, 22a-231, 22a-336,
324 22a-342, as amended, 22a-345, 22a-346, 22a-347, 22a-349a, 22a-358, 22a-
325 359, 22a-361, as amended, 22a-362, 22a-365 to 22a-379, inclusive, as
326 amended, 22a-401 to 22a-411, inclusive, as amended, 22a-416, 22a-417,
327 22a-424 to 22a-433, inclusive, 22a-447, 22a-449, as amended, 22a-450,
328 22a-451, 22a-454, as amended, 22a-458, 22a-461, 22a-462 or 22a-471, or
329 any regulation, order or permit adopted or issued thereunder by the
330 Commissioner of Environmental Protection shall be liable to the state
331 for the reasonable costs and expenses of the state in detecting,
332 investigating, controlling and abating such violation. Such person shall
333 also be liable to the state for the reasonable costs and expenses of the
334 state in restoring the air, waters, lands and other natural resources of
335 the state, including plant, wild animal and aquatic life to their former
336 condition insofar as practicable and reasonable, or, if restoration is not
337 practicable or reasonable, for any damage, temporary or permanent,
338 caused by such violation to the air, waters, lands or other natural
339 resources of the state, including plant, wild animal and aquatic life and
340 to the public trust therein. Institution of a suit to recover for such
341 damage, costs and expenses shall not preclude the application of any
342 other remedies.

343 Sec. 10. Section 22a-152 of the general statutes is repealed and the
 344 following is substituted in lieu thereof (*Effective October 1, 2004*):

345 The Governor, or the Commissioner of Environmental Protection,
 346 on behalf of this state, is authorized to enter into agreements with the
 347 government of the United States providing for discontinuance of
 348 certain of the programs of the government of the United States with
 349 respect to sources of ionizing radiation and the assumption thereof by
 350 this state, as provided for in the Atomic Energy Act of 1954, as
 351 amended.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>
Sec. 5	<i>October 1, 2004</i>
Sec. 6	<i>October 1, 2004</i>
Sec. 7	<i>October 1, 2004</i>
Sec. 8	<i>October 1, 2004</i>
Sec. 9	<i>October 1, 2004</i>
Sec. 10	<i>October 1, 2004</i>

Statement of Legislative Commissioners:

Minor revisions were made throughout the bill for purposes of clarity and consistency.

ENV *Joint Favorable Subst. C/R*

JUD

JUD *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Attorney General	GF - None	None	None
Department of Environmental Protection	Environmental Quality - Cost-Offsetting Revenue Gain	See Below	See Below
Resources of the General Fund	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The development and implementation of a fee-based program for the control of radiation hazards to secure “agreement state status” with the United States Nuclear Regulatory Commission will be fully paid for by the regulated community through fees. These fees will be deposited into a separate account in the Environmental Quality Fund for the Department of Environmental Protection (DEP) to develop and administer the program. It is anticipated that the program will be implemented over a 3-5 year period. The revenue will be derived from fees for approximately 250-300 licenses and 250-300 registrants in the state. Three million in revenue will be needed to cover the start-up period of the program and \$1.3 million a year, in current dollars, will be needed to fully operate the program. The DEP will need 12-14 employees, consisting of radiation control physicist and clericals. The DEP and the regulated community will determine the specific fees to support the program.

The bill requires the Office of the Attorney General (OAG) to institute a civil action upon the request of the Commissioner of the Department of Environmental Protection with respect to certain

hazards, pollution or contamination. The potential workload increase to the OAG could be accommodated within budgeted resources. There is a potential revenue gain associated with civil penalties under the bill.

OLR Bill Analysis

sSB 464

**AN ACT CONCERNING THE CONTROL AND SECURITY OF
RADIOACTIVE MATERIAL****SUMMARY:**

This bill requires the environmental protection commissioner to adopt regulations needed for the state to enter into "agreement state status" with the federal Nuclear Regulatory Commission (NRC). This allows the Department of Environmental Protection (DEP) to replace the NRC as the regulatory agency overseeing licensing and safety of certain radioactive materials in Connecticut. The NRC will continue to regulate state nuclear power plants.

The 1954 federal Atomic Energy Act permits the NRC to transfer to a state regulatory authority over certain radioactive material if the governor signs a letter of intent and the state can show that its regulatory program is (1) compatible with NRC's regulations, (2) adequate to protect public health and safety, and (3) self-supporting. The bill authorizes the commissioner to adopt the necessary regulations and creates fees needed to administer the program and implement and enforce the regulations.

The bill authorizes the commissioner to adopt regulations regarding the licensing of ionizing radiation sources.

By law, anyone using, producing, manufacturing, transporting, transferring, receiving, owning, acquiring, or possessing any ionizing radiation sources must be licensed, registered, or exempt. The bill also requires licensure, registration, or exemption for anyone constructing ionizing radiation sources, and extends these requirements to (1) persons, firms, corporations, towns, cities, and boroughs operating any ionizing radiation source; (2) hospitals using naturally occurring radioactive material or radioactive isotopes; and (3) health professionals using x-ray machines.

It imposes penalties on people who violate laws and regulations concerning radioactive sources and material; makes such responsible

parties liable for the costs of the clean-up, legal expenses and court costs; and for the costs of restoring the air, waters, land, and other natural resources of the state. It entitles people who clean up discharges to reimbursement from the responsible parties if the contamination was intentionally, negligently, or recklessly caused.

The bill repeals a requirement that the commissioner hold a hearing at the request of anyone affected by certain proceedings.

It authorizes the DEP commissioner, as well as the governor, to (1) enter into agreements with the federal government for the assumption of certain radiation programs by the state, and (2) hire consultants, experts or technicians need to investigate and report on matters connected with implementation of laws concerning radiation and radioactive materials.

EFFECTIVE DATE: October 1, 2004

ADOPTION OF REGULATIONS

The commissioner must adopt regulations concerning ionizing radiation sources and radioactive materials. The bill defines the latter as any solid, liquid or gas that emits ionizing radiation spontaneously.

The regulations must include those:

1. needed to secure agreement state status;
2. relating to construction, operation, control, tracking, security, and decommissioning of ionizing radiation sources, including any modification or alteration of such sources;
3. relating to the production, transportation, use, storage, possession management, treatment, disposal, or remediation of radioactive materials;
4. relating to planning for and responding to actual or potential terrorist or other emergency events that involve, or may include, radioactive materials;
5. needed to carry out laws pertaining to radiation and radioactive materials; and
6. establishing fees for the licensure of sources of ionizing radiation, which fees, together with other fees authorized by law, must be sufficient to administer, implement, and enforce an ionizing radiation program.

LICENSING REGULATIONS

By law, the commissioner has broad authority to adopt regulations for the control of radiation and radioactive materials. The bill specifically authorizes him to adopt regulations for the general or specific licensing of ionizing radiation sources, such as gamma rays, x-rays, and beta particles; neutrons, protons, high-speed electrons, and other atomic and nuclear particles.

By law, the commissioner can amend, suspend, and revoke such licenses. The bill also authorizes him to issue, deny, renew, and modify such licenses, and set licensing terms and conditions he believes necessary.

LICENSING FEES AND THE IONIZING RADIATION MANAGEMENT ACCOUNT

The bill authorizes the commissioner to set licensing fees for ionizing radiation sources and to use the fees, together with other fees the law allows, to pay for administering, implementing, and enforcing the ionizing radiation program, and laws, regulations, or guidelines concerning radiation and radioactive materials. He must deposit the fees in an Ionizing Radiation Management Account the bill creates within DEP's Environmental Quality Fund, rather than in that Fund's environmental quality account. The account may receive money from other sources besides licensing fees, and the commissioner may also use those funds to implement, administer, and enforce the program. Any money remaining in the account at the end of a fiscal year must be carried forward to next fiscal year.

TERRORIST EVENTS

The bill authorizes the commissioner to set radiation exposure guidelines for emergency responders and the public related to terrorist events involving radioactive materials. He may base the guidelines on recommendations of the federal government and the National Council on Radiation Protection and Measurements.

ORDERS TO ABATE AND CORRECT VIOLATIONS

The bill authorizes the commissioner to issue, modify, or revoke orders to correct or abate (1) pollution or a potential source of pollution from

ionizing radiation or radioactive materials, and (2) violations of laws, regulations, and licenses concerning radiation sources and radioactive materials. He may include other remedial measures as needed to correct such violations. He may issue such orders to people who (1) violate the law, regulations, or permits or (2) own the land on which the violation occurs, regardless of whether they took part in the violation. Two or more people receiving such an order for the same violation will be held jointly and severally liable.

Order and Hearing Procedure

The bill requires that orders the commissioner issues be delivered by certified mail, return receipt requested, or by a state marshal or indifferent person. If a state marshal or indifferent person serves the order, they must serve a true copy, and the original, with a return of service endorsed on it, must be filed with the commissioner. The order is deemed issued upon service or deposit in the mail. Any order must state the basis on which it is issued and specify a reasonable time for compliance.

An order is considered final unless a person aggrieved by the order asks in writing for a hearing before the commissioner within 30 days of the date the order is issued. The commissioner must hold a hearing as soon after such a request as practicable. An aggrieved party cannot appeal an order unless he first requests a hearing.

After a hearing, or after he issues an order, the commissioner may modify an order or extend the order's time schedule if he believes it advisable or necessary. Such a modification is considered a revision of an existing order and not a new order. There can be no hearing or appeal from such a modification or extension. Following a hearing, the commissioner must consider all supporting and rebutting evidence and may affirm, modify, or revoke his order. He must notify the recipient of the order of his action by certified mail, return receipt requested.

After the commissioner issues a final order, he must file a certified copy or notice of the order on the land records in the town where the land is located, to serve as notice to the owner's heirs, successors, and assigns. The commissioner must similarly file another such certificate in the same town's land records when the order has been fully complied with or revoked. A final order is subject to appeal, which

must be brought in New Britain Superior Court.

Hearing Requirement Repealed

The bill repeals a requirement that the commissioner hold a hearing at the request of any person whose interests may be affected in proceedings (1) for the issuance or modification of rules and regulations pertaining to control of ionizing radiation sources; (2) granting, suspending, revoking or amending a license; and (3) for determining compliance with, or granting exceptions from, DEP rules and regulations.

REMEDIES AVAILABLE TO THE COMMISSIONER

Current law authorizes the commissioner, when he believes anyone has violated or is about to violate a law, regulation, or order pertaining to radioactive materials or radiation sources, to ask the attorney general to bring a civil action to enjoin the violation or direct compliance with the law, regulation, or order. The bill authorizes the commissioner to also make such a determination and request when he believes someone has violated or is about to violate the terms of a license, and for any action or omission in which a person has established, created, or maintained or will establish, create or maintain an exposure hazard or source of pollution from ionizing radiation or radioactive material.

The bill expands the commissioner's authority in such cases to (1) persons, firms, corporations, towns, cities, and boroughs operating any ionizing radiation source; (2) hospitals using naturally occurring radioactive material or radioactive isotopes; and (3) health professionals using x-ray machines.

It requires, rather than authorizes, the attorney general to ask a court for an order to remediate, control, or abate the pollution. He must file all such actions, including those the law already authorizes, in Hartford Superior Court. All such actions by the attorney general must take precedence over any other civil action for purposes of order of trial.

It authorizes the commissioner to investigate, contain and remove, mitigate, monitor, or prevent the effects of the discharge of radioactive material, radioactive waste, or actual or potential exposure hazard if (1) the person responsible for the discharge or exposure hazard does

not act immediately to contain and mitigate the effects of the leak to the commissioner's satisfaction or (2) the responsible party is unknown, and the discharge is not being contained, removed, or mitigated by the federal government, a state agency, a municipality, or regional or interstate authority. The bill authorizes the commissioner to enter into a contract with a third party to carry out the remediation.

Liability of Responsible Parties

The bill makes the party responsible for actual or potential pollution or exposure hazard from radioactive materials, waste, or ionizing radiation liable for all costs and expenses the commissioner incurs in investigating, containing, removing, cleaning, monitoring, mitigating, or preventing the pollution and the legal expenses and court costs the commissioner incurs. The bill authorizes the commissioner to seek additional compensation from the responsible party, including punitive damages. If more than one person causes the pollution or contamination, they will be held jointly and severally liable. The commissioner may ask the attorney general to bring a civil action to recover all such costs and expenses.

Under the bill, anyone who knowingly or negligently violates its provisions is liable to the state for the reasonable costs of detecting, investigating, controlling and abating the violation, and for restoring the air, water, lands, and other natural resources to their former condition as far as is practical and reasonable. If restoration is not practicable and reasonable, the person is liable for any temporary or permanent damage the violation causes to the air, waters, lands, or other natural resources.

Remediation

The bill entitles people who remediate or mitigate the unauthorized discharges of radioactive material or radioactive waste to reimbursement from the responsible party if the responsible party caused the pollution through his intentional, negligent, or reckless conduct. Where pollution results from the negligence of more than one person, each person will be held jointly and severally liable.

The bill authorizes the commissioner to ask the attorney general to bring a civil action to recover the costs and expenses of the commissioner's contractual obligation to remediate discharges if the responsible person does not fulfill his contractual duties. If the

responsible person firm or corporation is unknown, the commissioner must ask the federal government to assume the obligation to the extent federal law requires.

PENALTIES FOR ILLEGAL DISCHARGE

The bill subjects anyone who violates any of the laws governing radiation and radioactive materials, or any regulation, license, or order issued under those laws, to a fine of up to \$10,000 a day for each offense. The fine also applies to any landowner who allows such a violation to occur on his property. If two or more people are responsible they must be held jointly and severally liable. The bill authorizes the attorney general, at the commissioner's request, to begin a civil action in Hartford Superior Court to recover the penalty. It requires any such action to take precedence over other actions in the order of trial.

It subjects anyone who, with criminal negligence, violates those laws, orders, or licenses, or regulations to a fine of up to \$25,000 a day and up to one year in prison. A subsequent conviction is punishable by up to \$50,000 a day for each day of the violation and up to two years in prison.

It subjects anyone who knowingly violates these laws, orders or regulations, or licenses to a fine of up to \$50,000 a day for each day of the violation and up to three years in prison. A subsequent conviction is punishable by a fine of up to \$100,000 a day for each day of violation and up to 10 years in prison.

By law, anyone who intentionally makes a false written statement under oath or on a form that states false statements are punishable is guilty of a class A misdemeanor, and subject to a \$2,000 fine and up to one year in prison. The bill subjects anyone who knowingly makes a false statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under laws governing radiation and radioactive materials, or any regulation, license or order, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method the law requires be maintained, to a fine of up to \$25,000 and up to two years in prison for each violation.

Each of the above violations is considered a separate and distinct

offense, and each day of a continuing violation is also a separate and distinct offense. Penalties for offenses involving criminal negligence, knowing violation, and intentional false statements apply to responsible corporate officers and municipal officials.

BACKGROUND

Licensees

DEP estimates there are between 200 and 250 NRC licenses in Connecticut. They include universities, research facilities, industries, doctors' offices, hospitals, and pharmaceutical companies.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute Change of Reference

Yea 22 Nay 0

Judiciary Committee

Joint Favorable Report

Yea 22 Nay 0